

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

OMNISEC INTERNATIONAL SECURITY
SERVICES, INC.

Employer

and

Case 5-RC-16209

NATIONAL ASSOCIATION OF SPECIAL
POLICE AND SECURITY OFFICERS

Petitioner

SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election¹ issued by the undersigned on April 9, 2008,² a secret-ballot election was conducted under my supervision on May 5 with the following results:

Approximate number of eligible voters	41
Void ballots	0
Votes cast for Petitioner	24
Votes cast against participating labor organization	6
Valid votes counted	30
Challenged ballots	2
Valid votes counted plus challenged ballots	32

The challenged ballots were not sufficient in number to affect the outcome of the election.

Timely objections to conduct affecting the results of the election were filed by the Employer on May 12.³ The objections are attached hereto as Exhibit A.

¹ The unit is: "All full-time and regular part-time security officers employed by the Employer at the Thurgood Marshall Federal Judiciary Building in Washington, DC, but excluding all captains, lieutenants, office clerical employees, professional employees, managerial employees, and supervisors as defined in the Act." The eligibility period is the payroll period ending March 27, 2008.

² Hereinafter, all dates are in 2008.

³ The petition was filed on March 11. The undersigned will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

THE OBJECTIONS

The Employer failed to present any evidence whatsoever in support of its objections. A party filing objections has seven days to provide the Regional Director with evidence to support the objections, unless additional time has been granted by the Regional Director. See Section 102.69(a) of the Board's Rules and Regulations. In this case, objections were to be filed by May 12 and the Employer filed its objections on that date. Accordingly, any evidence in support of the Employer's objections was due in the Regional Office by the close of business on May 19. The Board will strictly enforce this deadline. *Star Video Entertainment*, 290 NLRB 1010 (1988).

The Employer did not request an extension of time to submit evidence in support of its objections. Rather, in its objections the Employer posits that no evidence is necessary because, "The fact that supervisors participated in the election process as bargaining unit members is an interference with the election as a matter of law." (Employer's "Objection to Election," May 12, 2008, p. 2) As of the date of this report no evidence has been received from the Employer.

A post-election hearing is granted when the party filing objections has supplied prima facie evidence raising "substantial and material issues" that would warrant setting the election aside. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 968 (4th Cir. 1980), citing *Gulf Coast Automotive Warehouse Co. v. NLRB*, 588 F.2d 1096 (5th Cir. 1979). If the objecting party does not submit its supporting evidence within the required period of time, the objections may be dismissed. *Kano Trucking Serv.*, 295 NLRB 514, 515 (1989). Furthermore, a party seeking to challenge an election may not rely upon "the Board staff to seek out evidence that would warrant setting aside the election." *U.S. Rubber Co. v. NLRB*, 373 F.2d 602, 606 (5th Cir. 1967) (internal citations omitted). Rather, the party seeking to set aside election results must submit prima facie evidence "of a kind which would be admissible into evidence at a hearing and subjected to evaluation as to its weight and probative force." *Grants Furniture Plaza, Inc.*, 213 NLRB 410 (1974). Thus, the objecting party's burden is heavy because conclusory allegations are insufficient and specific evidence is required. *NLRB v. Claxton Mfg. Co.*, 613 F.2d 1364, 1366 (5th Cir. 1980).

The Employer's objections allege full-time sergeants are supervisors and that their participation in the election tainted the election. The supervisory status of the sergeants was fully examined in my Decision and Direction of Election, issued April 9. At the hearing,

evidence presented to show the sergeants are supervisors under Section 2(11) of the Act was inconclusive. I allowed the sergeants to vote subject to challenge in part because the sergeant position was newly created, and it was possible more insight regarding the position's authority would be revealed over time. In its objections, the Employer asserts that after the election, the Petitioner conceded that full-time sergeants were supervisors under the Act. There is no evidence to support the Employer's assertion. Assuming the truth of that assertion, however, does not establish the Employer's case. Indeed, accepting the Employer's argument would result in the invalidation of every election in which a challenge ultimately is upheld on the bases of supervisory status, without regard to the circumstances or the activities of the disputed individual(s). This is not Board law. Cf. *Northeastern University*, 261 NLRB 1001 (1982), *enfd.* 707 F.2d 15 (1st Cir. 1983). Therefore, they were permitted to vote under the challenge procedure and were clearly entitled to be present in the polling site. The Employer has not presented any additional evidence on this point in support of its objections. Accordingly, at this time there is still insufficient evidence to determine whether the sergeants possess supervisory authority as described in Section 2(11) of the Act.

Even assuming, *arguendo*, that sergeants are 2(11) supervisors, there is no evidence they engaged in any conduct that would warrant a post-election hearing or setting aside the election. The Employer's comment that the sergeants "may have supported the union and thus influenced the votes of other employees," is an insufficient basis upon which hold a post-election hearing or to set aside the election. (Employer's "Objection to Election," May 12, 2008, p. 2) The Employer has presented no evidence indicating any conduct engaged in by the sergeants materially affected the outcome of the election, and in particular the Employer has presented nothing to suggest the sergeants engaged in any pro-Union conduct whatsoever, or any conduct affecting in any way, even a single voter. In these circumstances, the Employer has presented no evidence to warrant holding a post-election hearing. *Northeast Iowa Telephone Co.*, 346 NLRB 465 (2006); *Fidelity Healthcare & Rehab Center*, 349 NLRB No. 120 (June 4, 2007).

As stated above, the Employer failed to submit any evidence whatsoever in support of its objections. In addition, the objections themselves contain mere speculation and conclusory allegations, insufficient to meet the Employer's burden of providing specific facts to support its objections as defined in the Board's Rules and Regulations. Therefore, I overrule the Employer's objections in their entirety, and issue the Certification of Representative.

CERTIFICATION OF REPRESENTATIVE

It is HEREBY CERTIFIED that a majority of valid votes has been cast for National Association of Special Police and Security Officers and that said Union is the exclusive collective-bargaining representative of the employees in the unit involved herein, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Dated at Baltimore, Maryland, this 29th day of May 2008.

Wayne R. Gold
Regional Director
National Labor Relations Board, Region 5
U.S. Appraisers' Stores Building
103 South Gay Street, 8th Floor
Baltimore, MD 21202

Under provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Supplemental Decision, if filed, must be filed with the Board in Washington, D.C. Under provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of objections and which are not included in the Decision, are not a part of the record before the Board unless appended to exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of the evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. Exceptions must be received by the Board in Washington by **June 12, 2008**. The exceptions may be filed electronically through E-Gov on the Board's website, www.nlr.gov,⁴ but may not be filed by facsimile.

⁴ Electronically filing exceptions is similar to the process described above for electronically filing the eligibility list, except that on the E-filing page the user should select the option to file documents with the Board/Office of the Executive Secretary.